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Paper 5

Filed 27 June 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Administrative Patent Judge Sally C. Medley)

DAVID B. **KIRBY** and NIHAT O. CUR
Junior Party
(Patent 5,532,034, 5,505,810),

v.

CLAUDIO **BOFFITO**, ANTONIO SCHIABEL
and ALESSANDRO GALLITOGNOTTA
Senior Party
(Application 08/675,969).

Patent Interference No. 105,311 and 105,312¹

Before: McKELVEY, Senior Administrative Patent Judge, and SCHAFER and MEDLEY,
Administrative Patent Judges.

MEDLEY, Administrative Patent Judge.²

Judgment - Bd.R. 204

¹ 5,532,034 is involved in 105,311 and 5,505,810 is involved in 105,312.

² As part of Board efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, subsequent papers in this case originating at the Board will not have signatures. The signature requirements for the parties have not changed. See, e.g., 37 CFR § 1.18.

As a result of the sanction imposed on the junior party Kirby, Kirby is precluded from filing any papers in interferences 105,311 and 105,312 (Paper 4).

Since Kirby is precluded from filing any papers in the interferences, including a priority statement, judgment is entered against Kirby in both interferences. Bd.R. 204(3).

A party dissatisfied with a judgment may file a request for rehearing. Bd.R. 127(d). If Kirby files a request for rehearing, the following papers must simultaneously be filed with the request:

- (1) Notice of lead and backup counsel (Bd.R. 108(b))
- (2) A clean copy of claims (Bd.R. 110(a))
- (3) Notice of real party-in-interest (SO ¶ 3.1)
- (4) Notice of related proceedings (SO ¶ 3.2)
- (5) A request for file copies (SO ¶ 11)
- (6) An annotated copy of claims (Bd.R. 110(b))

Boffito may, within 5 days of the date of a Kirby request for rehearing, file a response. Boffito must simultaneously file papers enumerated as (1)-(6) immediately above with its response.

Upon consideration of any request for rehearing filed by the party Kirby, the board may determine to vacate judgment and continue the interference. The parties should be prepared to move forward with the interference in an expeditious manner. Note, that in the event that the interferences 105,311 and 105,312 continue, the default time period 8 of **28 February 2006** (attached to Paper 1) will be set as the final time for taking action, and the parties will not be permitted to extend such time.

Upon consideration of the record it is

ORDERED that judgment on priority as to Count 1 of interference 105,311 (Paper 1 at 5) is awarded against junior party DAVID B. **KIRBY** and NIHAT O. CUR.

FURTHER ORDERED that judgment on priority as to Count 1 of interference 105,312 (Paper 1 at 5) is awarded against junior party DAVID B. **KIRBY** and NIHAT O. CUR.

FURTHER ORDERED that junior party DAVID B. **KIRBY** and NIHAT O. CUR is not entitled to a patent containing claims 1, 4-8, 11 and 12 (corresponding to Count 1 of interference 105,311) of U.S. Patent 5,532,034.

FURTHER ORDERED that junior party DAVID B. **KIRBY** and NIHAT O. CUR is not entitled to a patent containing claims 1 and 2 (corresponding to Count 1 of interference 105,312) of U.S. Patent 5,505,810.

FURTHER ORDERED that a copy of this paper shall be made of record in files of application 08/675,969, U.S. Patent 5,532,034, and U.S. Patent 5,505,810.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and Bd.R. 205.

FURTHER ORDERED that if Kirby files a request for rehearing under Bd.R. 127, Kirby must simultaneously file those papers specified above.

FURTHER ORDERED that Boffito may, within **five days** of the date of a request for rehearing filed by Kirby, file a response.

FURTHER ORDERED that any response filed by Boffito must be accompanied by the papers specified above.

cc (via overnight delivery):

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